

WARSAW HEALTHCARE CENTER, WARSAW, VIRGINIA

This Settlement Agreement is entered into this 28 day of December, 2004 by and between the United States of America, including the United States Attorney for the Eastern District of Virginia, and the Medicaid Fraud Control Unit ("MFCU") of the Office of the Attorney General and the Department of Medical Assistance (collectively the "Commonwealth of Virginia") and the Warsaw Healthcare Center ("Warsaw"), a partnership, engaged in the provision of health care services to Medicare beneficiaries (Provider 49-5130) and Medicaid recipients (Provider 49-5130-1). The above sovereigns and entities are referred to herein as the "parties."

PREAMBLE

A. Whereas, Warsaw, located at 4522 Richmond Road, Warsaw, Virginia 22572, is a long term care nursing facility.

B. Whereas, the United States Attorney's Office for the Eastern District of Virginia and the Commonwealth of Virginia (collectively referred to as "the Governments") conducted an investigation pursuant to 31 U.S.C. §§ 3729-33 and the Virginia Code Annotated § 32.312 and § 32.1-313. As a result, the Governments contend that during a period from January 1, 1998 to present, certain residents of Warsaw, identified in the subpoena duces tecum, dated August 2, 2002, failed to receive care that met the statutorily required standards set forth in 42 U.S.C. § 1395i-3;

C. Whereas, Warsaw, in entering into this Settlement Agreement, does not admit that it failed to afford care consistent with statutorily require standards and specifically denies any wrongdoing, inadequacy or liability in regard to the care rendered to any resident of Warsaw;

D. Whereas, the parties wish to resolve this matter in a manner that benefits the residents of the facility and promotes the continued participation of Warsaw in the Medicare and Medicaid programs;

E. Whereas, the parties agree that this Settlement Agreement does not constitute and shall not be construed as an admission of any liability, inadequacy or wrongdoing on the part of Warsaw, any affiliated entity, or their respective owners, partners, directors, or currently employed officers, agents, or employees, and may not be used as evidence of such in any proceeding by either the Governments or any third party;

F. Now, therefore, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the parties, intending to be legally bound, enter into the following Settlement Agreement:

PAYMENTS AND FINANCING REQUIREMENTS

1. Warsaw agrees to pay the sum of Twenty-Five Thousand Dollars (\$ 25,000) to the United States in settlement of investigations arising from the federal civil False Claims Act, 31 U.S.C. §§ 3729-2733, and Virginia's civil Medicaid Fraud statutes, §§ 32.1- 312 and 313 of the Code of Virginia. In satisfaction thereof, a check in said amount of \$ 25,000 shall be tendered to the Commonwealth of Virginia, Medicaid Fraud Control Unit, with the designated payee: Virginia Attorney General's Office, Medicaid Fraud Control Unit, within ten (10) days following the "Implementation Date" of this agreement. The Implementation Date shall be the date of the signature for Warsaw.

2. To ensure full implementation of this Settlement Agreement, Warsaw agrees to establish a separate account for the maintenance of a cash reserve in the amount of One Hundred Twenty-Four Thousand Dollars (\$124,000.00), hereinafter, the "Escrow Account," the proceeds

of which shall be used expressly for Warsaw's payment of expenses associated with the quality of care improvements, the Evaluator required by paragraph 21, *infra*, approved expenditures, and other compliance requirements set forth in the Settlement Agreement. The parties agree that the funds will be placed in the Escrow Account no later than ten (10) business days after the Implementation Date.

3. The parties agree that the Escrow Account may be maintained by REED SMITH LLP which shall act as the dispersing agent for these funds.

4. The parties understand that since the date of the commencement of this investigation, Warsaw has taken steps to provide care to all residents of Warsaw in a manner that fully comports with statutory and generally recognized standards of care for residents of long term care facilities.

STAFFING REQUIREMENTS

5. Warsaw shall at all times staff the facility with a sufficient number of qualified staff to fully meet the needs of residents as set forth in their comprehensive care plans. Warsaw shall make all decisions regarding the number of necessary staff based on the identified needs of residents. All staff shall be deployed throughout the facility in a manner designed to meet the individual needs of residents.

6. Warsaw agrees that appropriately qualified registered nurses shall be assigned to the position of unit manager for its nursing units and others, as needed, in order to have the necessary professional nursing expertise available at Warsaw to provide care that fully comports with statutory and generally accepted professional standards of care for all residents. Warsaw will exercise its best efforts to recruit and permanently hire appropriately qualified persons for these positions.

7. Warsaw shall secure the services of a consulting licensed clinical social worker at least monthly to review and assess whether: (a) staff has properly evaluated the psychosocial needs of residents and has had relevant information communicated to the caregiving staff; and (b) staff has made appropriate corrections as indicated based on the consultant's assessment.

8. Warsaw agrees to continue, review, and revise, as necessary, a program of incentives, including salary and benefit enhancements, to attract and retain competent and qualified nursing staff at Warsaw.

9. The parties agree that in implementing the requirements of this settlement agreement, Warsaw is bound by a collective bargaining agreement with certain of its employees.

CLINICAL REQUIREMENTS

10. Warsaw agrees to:

10.1 Provide each resident with adequate skin care, nutrition, turning, and positioning and other services to decrease the likelihood of skin breakdown and the development of pressure sores;

10.2 Implement a nutritional monitoring program for residents;

10.3 Provide residents with appropriate incontinence care, reasonable hygiene measures, and training or support in the activities of daily living;

10.4 Administer medication in appropriate fashion;

10.5 Afford effective pain management;

10.6 Take reasonable steps to ensure appropriate supervision of residents and prevent falls;

10.7 Identify in a timely manner changes in resident status warranting medical intervention and intervene appropriately;

10.8 Ensure that physical restraints are administered only as a matter of last resort and consistent with the exercise of professional judgment by a qualified professional; and

10.9 Provide reasonable personal hygiene measures for all residents.

10.10 Provide an incontinence management program for residents.

11. To implement the requirements of paragraph 10, above, Warsaw agrees to continue to implement clinical management systems and procedures that comport with generally recognized professional standards. Specifically, Warsaw agrees to continue to fully implement

its Fall Prevention Program, Pressure Ulcer Management Program, Restraint Reduction Program, Nutritional At Risk Program, Incontinence Management Program and clinical management programs in the areas of pain management, the evaluation and treatment of acute medical problems, and medication administration.

12. Warsaw shall develop and implement within sixty (60) days of the implementation date of this agreement a protocol for the monitoring of psychoactive drug use in older adults. Such protocol shall: a) include minimum assessment parameters (including evaluation of mental status and depression screening; b) require that the use of non-psychoactive and non-pharmacological interventions be exhausted prior to the use of psychoactive drugs, whenever appropriate in the judgment of the treating physician; c) require that the need for psychoactive medication be documented in the patient's record; and d) identify the role of the interdisciplinary team in conducting assessments and interventions. In addition, Warsaw shall articulate prescribing guidelines and provide educational material to its medical staff regarding the use of psychoactive drugs with older adults. Such materials and/or information shall be made a part of the facility's in-service training program.

13. Warsaw shall immediately require its Medical Director or designee who shall be a licensed physician to assist its Quality Assurance Committee in the evaluation of care provided to residents prior to unplanned or emergent hospital transfers and unexpected deaths to determine whether the care provided was consistent with generally accepted professional standards. As a part of such evaluations, the Medical Director and Quality Assurance Committee shall make recommendations, as appropriate. Warsaw agrees to implement all reasonable recommendations promptly.

14. Warsaw shall continue, review, and revise, as appropriate, within sixty (60) days of the implementation date of this agreement, a restorative nursing program to prevent, offset, or minimize the loss of functional skills of residents. Such program shall include training for nursing staff on monitoring resident skill levels and signs of decline in physical capacity as well as methods to prevent physical and mental deterioration from the lack of activity. The program shall emphasize restorative processes that assist residents in retaining or maintaining their ability to feed themselves, walk, and perform other activities of daily living. Warsaw shall assign to a licensed registered nurse the responsibility for supervision of the restorative nursing program, including verification that restorative services are being provided according to the plan of care.

15. Warsaw shall implement a computerized process of tracking individual activities of daily living so as to be able to identify an individual resident's needs in a more timely manner.

16. Warsaw shall cause its Activities Director to develop and implement an activity plan that: a) includes evaluation of functional status and associated need for adaptation to meet the individual needs of residents; and b) provides opportunities for self-expression, leisure, fitness/mobility, spiritual expression and emotional support. In addition, the Activities Director shall train staff on the need and value of an activity plan, including the responsibility of various staff to implement the plan.

17. Warsaw shall evaluate furniture and equipment needs to increase resident involvement in activity, promote adequate care, and enhance the living environment of residents, particularly in communal areas.

a. The parties recognize that that during the pendency of this matter, Warsaw has purchased:

a. Two (2) extra wide beds @ \$ 3,000.00 each;

b. Two (2) low electrical beds @ \$ 1,100.00 each;

- e. Two (2) merry walkers @ \$ 250.00 each;
- d. Two (2) Dynamaps @ \$ 1,200.00 each;
- e. Twenty-Five (25) pressure reducing mattresses @ 216.00 each;
- f. Twenty-Five (25) "heels up" @ \$ 100.00 each;
- g. Thirty-Two (32) Cases of One Hundred Incontinence Pads @ \$ 31.49 per case;
- h. Five (5) trapeze seats @ \$300 each;
- i. Twenty (20) perimeter mattresses @ \$275 each;
- j. Ten (10) floor mats @ \$130 each;
- k. Twenty (20) bed bolsters;
- l. Five (5) high wheelchairs @ \$500 each;
- and
- m. Fifty (50) hip protectors @ 31.85 each.

B. Following the Implementation Date Warsaw shall purchase:

- a. One fish tank @ \$ 500.00;
- b. One popcorn maker @ \$ 1,000.00;
- c. One jukebox or similar sound system @ \$ 1,000.00;
- d. Functional and home-like furniture for communal activity including:
 - 1. Forty (40) new dining room chairs @ \$375 each
 - 2. Ninety (90) guest chairs for resident rooms @ \$245 each

Warsaw agrees to spend not less than \$49,000.00 on such items and other items intended to benefit the care and treatment of residents within four (4) months following the implementation date.

18. Warsaw shall develop and implement a comprehensive, professional, written, in-service training program for all nursing staff at Warsaw conducted by a qualified individual knowledgeable in the delivery of care in a long term setting within ninety (90) days of the implementation date. The educational program shall be focused on topics relevant to the care of residents in the facility including: a) all the clinical requirements of this settlement agreement; b) special needs of residents as determined by facility staff; c) safety and accident prevention; d) restraint use, including alternatives to physical and chemical restraints; e) understanding the needs of the aged and disabled; f) resident rights including personal rights, property rights and protection of privacy and procedures for handling complaints; g) care of the cognitively impaired; h) prevention of pressure sores; and i) MDS/RAPS/care planning.

i) Training in the areas identified above may include utilization of programs available through local community resources.

ii) The mandatory training program shall include an initial implementation schedule, a schedule for consistent implementation, and a schedule for review and modification, as necessary.

iii) The training program shall include a requirement for orientation training, sufficient to enable staff to perform their duties; continuing professional education and mandatory remedial training for staff who are found to be deficient in their care obligations or who fail to meet satisfactory performance standards. Mandatory remedial training for staff shall be afforded within a reasonable period of time.

iv) All dietary, clinical management and nursing staff, and other staff at Warsaw shall attend in-service training as is appropriate for their discipline and level of job

responsibilities. Such training and other appropriate professional development and compliance training shall be provided no less than annually.

19. Warsaw agrees that it will comply with its obligations under the applicable laws, rules, and regulations governing the Medicare and Medicaid programs, including the Nursing Home Reform Act of 1987, as amended and codified at 42 U.S.C. § 1395 et seq., 42 C.F.R. Parts 483, 488.

RECORDS

20. Warsaw will continue to adopt and enforce policies requiring that all professional standards relating to the proper means of entering and, when necessary, changing information in the medical record be strictly adhered to. Warsaw will train its staff that falsification or improper alteration of any resident medical record or other documents related to resident care is forbidden. Warsaw will obtain from each employee a signed statement indicating that the employee understands the policy forbidding any falsification or improper alteration and the appropriate manner in which to make entries into medical records and, should a change be necessary, the acceptable means of documenting the changes and the reasons therefore. Warsaw further agrees that it will terminate the employment of any person found to have willfully or through deliberate ignorance or reckless disregard caused a falsification or improper alteration of any record maintained at Warsaw. The parties agree that the provisions of this paragraph do not mean that any official of Warsaw has engaged in any act of falsification or improper alteration of facility records.

EVALUATOR AND TECHNICAL ASSISTANCE ADVISOR

21. Warsaw agrees to engage an independent third party evaluator who shall be a Registered Nurse (the "Evaluator") with substantial experience in the care of elderly persons residing in a nursing home setting to assist and monitor Warsaw's compliance with the terms of this Settlement Agreement and the provision of quality care. The United States and Warsaw shall mutually agree upon the Evaluator. If the parties are unable to agree on the appointment of an Evaluator, the United States may nominate the Evaluator and petition the United States District Court for the Eastern District of Virginia or any other court of competent jurisdiction for the appointment of its nominee.

22. If the Evaluator resigns or is removed for any reason by mutual agreement of the Parties prior to the completion of his/her term of appointment, the United States and Warsaw shall mutually agree upon the appointment of a successor Evaluator. If the parties are unable to agree on the appointment of a successor Evaluator, the United States may nominate the Evaluator and petition the United States District Court for the Eastern District of Virginia or another court of competent jurisdiction for the appointment of its nominee.

23. The Evaluator shall visit Warsaw for a period of fifteen (15) months from the implementation date of this Settlement Agreement and shall have access to all current nursing home residents, their medical records, records in the possession or control of Warsaw (e.g., staffing records and quality assurance reviews) and Warsaw staff and employees, for purposes of ensuring coordination of responses to identified problems and enabling the Evaluator to fulfill his/her duties. Warsaw shall ensure the Evaluator's immediate access to facilities, individuals, and documents, and assist in obtaining the full cooperation of its current employees, contractors, and agents. For purposes and during the term of this Settlement Agreement, the Evaluator shall

be deemed a consultant to the Warsaw quality assurance committee to the extent it receives quality assurance information or documents from Warsaw, and disclosure of Warsaw's quality assurance documents and information to the Evaluator shall not constitute a waiver of any quality assurance privilege.

24. The Evaluator shall evaluate compliance by Warsaw with the requirements of this Settlement Agreement and shall advise management and staff as to recommended steps and procedures that, in the Evaluator's view, may be implemented to facilitate compliance with this Settlement Agreement. The Evaluator shall inspect and evaluate staffing reports and may make recommendations as to increased staffing levels or staffing adjustments.

25. The Evaluator shall provide an exit interview to appropriate officials of Warsaw following the conclusion of each visit to the facility and may make recommendations both informally and in writing. At the request of Warsaw, the Evaluator may provide or arrange for direct technical assistance to facilitate compliance with this Settlement Agreement. The cost of mutually agreed upon outside technical assistance shall be paid by Warsaw. Technical assistance provided for by the Evaluator will be compensated within the terms of this agreement. The Evaluator shall have no financial interest in any source of outside technical assistance recommended to the facility.

26. It is the express intent of the Parties that the Evaluator work in a cooperative and amicable manner with Warsaw, provide technical assistance as requested, and otherwise facilitate compliance with this Settlement Agreement by Warsaw. Warsaw will cooperate with the Evaluator appointed to assist in the implementation of this Agreement.

27. The Evaluator shall have no authority to direct the care of any individual resident but may notify the Medical Director and/or the Director of Nursing of a recommendation that a

resident should be seen by a physician within a reasonable period of time in light of the resident's condition. Warsaw agrees that it will contact the resident's attending physician when requested by the Evaluator, and will follow the directions of the physician, if any. If, in the professional judgment of the Evaluator, an emergency exists with respect to any resident or other condition, the Evaluator shall immediately notify the Administrator or appropriate supervisor on duty at Warsaw so that immediate remedial action can be taken. Warsaw shall record such requests and responses according to the facility's protocols. Nothing in this paragraph shall be construed as preventing the Evaluator from notifying the parties immediately or preclude the United States from taking necessary legal steps to protect the life and safety of any resident. The parties agree to confer and address the issues raised by the Evaluator as soon thereafter as is practicable. The United States specifically agrees to confer with counsel for Warsaw prior to instituting any legal action designed to protect the life and safety of any resident.

28. The Evaluator may confer and correspond with the parties on an ex parte basis, and both the parties and the Evaluator shall participate in regularly scheduled conferences (which may be attended by phone) to discuss the Evaluator's reports. Within ten (10) days from the Implementation Date, or the Evaluator's appointment, whichever occurs last, the Evaluator shall submit a budget to the Governments and Warsaw for the fifteen-month monitoring period. During the fifteen-month period, the Evaluator shall visit at least every three months or quarterly unless unforeseen or emergency circumstances occur or unless otherwise agreed to by the parties to this Settlement Agreement. The parties agree to consider revising the aforementioned schedule of visits of the Evaluator should fewer than the specified visits prove necessary based on experience.

29. Within fourteen calendar days following the conclusion of each visit, the Evaluator shall write a brief and concise written report documenting any recommendations relating to compliance or any other matter addressed in this Settlement Agreement. The report shall document any recommendations relating to compliance and include all remedial actions, ongoing quality initiatives or other actions taken by Warsaw in response to the identified issues, and any recommendations for amendments to Warsaw's policies and procedures. The Evaluator shall deliver the report to the parties to this Settlement Agreement by delivering a copy to the following named persons (or his or her designee) via electronic mail or facsimile, and USPS regular mail, or such other method of delivery agreed upon by the parties.

Arthur E. Peabody, Jr.
Assistant United States Attorney
United States Attorney's Office
Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314
Fax: (703) 299-3983

Todd Yaccavone, Administrator
Warsaw Healthcare Center
4522 Richmond Road
Warsaw, VA 23572
Fax: (804) 333-0118

Julia Krebs-Markrich, Esq.

Reed Smith LLP

3110 Fairview Park Drive

Falls Church, VA 22042

Fax (703) 641-4340

30. Upon receipt of the report, Warsaw shall have the opportunity to submit a response regarding any concerns raised by the Evaluator and provide any further information to clarify or contest the Evaluator's conclusions and explain subsequent actions taken by Warsaw in response to these concerns. Warsaw's response, if any, shall be submitted within ten (10) business days of receipt by Warsaw of the Evaluator's report, via electronic mail or facsimile and USPS regular mail, as directed by the Governments. Warsaw and the United States agree that, at the request of Warsaw or the Governments, the parties shall meet in person or via teleconference promptly to discuss any issues or concerns raised by the Evaluator or to otherwise facilitate compliance. Warsaw is not bound by the Evaluator's recommendations or conclusions but agrees to consider and address them in good faith. In the event the United States believes there has been a breach of this Settlement Agreement, nothing in this Agreement shall prevent the United States from calling the Evaluator as a witness in any proceeding brought to enforce this settlement agreement.

31. The Evaluator's compensation and reasonable expenses shall be set forth in a budget established at the outset of the engagement. Warsaw shall bear all reasonable costs and expenses of the Evaluator consistent with the hourly rates established. The parties agree that the

total budget for the monitoring program for fifteen months shall not exceed the amount of \$75,000 unless unforeseen circumstances arise.

32. The Evaluator shall submit itemized monthly invoices to the Administrator of Warsaw that satisfactorily account for time and reasonable travel and lodging expenses incurred in carrying out the duties of Evaluator in accordance with the budget. The Evaluator shall certify that the invoices are accurate. Failure to pay the Evaluator within thirty (30) calendar days of review and approval of his/her invoice shall constitute breach of this Agreement. At all times the Evaluator shall coordinate his or her activities, including interviews and meetings, with the Administrator or the Director of Nursing and/or Warsaw personnel to maximize participation and to minimize disruption in the day-to-day operations of the facility. The Evaluator may visit the facility at any time without notice. All information, including identifiable personal health care and other information of all residents and other information regarding residents and staff, and all documents pertaining thereto, are strictly confidential and shall not be disclosed by the Evaluator to anyone other than the parties except as necessary to enforce this Agreement, or as otherwise required by law, regulation, or official process.

33. No later than fifteen (15) months following the implementation date, the Evaluator shall prepare a comprehensive Final Report evaluating the status of compliance by Warsaw with each and every provision of this Settlement Agreement, as well as Warsaw's responses to each area of concern, and deliver such Final Report to the parties. The United States shall provide a copy of the Final Report to the Commonwealth of Virginia. Warsaw shall have fifteen (15) days in which to deliver its comments, any evidentiary rebuttal, and response to the Final Report. The United States shall have fifteen (15) days to review the Final Report and the response provided by Warsaw. If, after review of the Final Report and Warsaw's response,

the United States determines that Warsaw has achieved full compliance with each and every provision of this Settlement Agreement, all monitoring activities shall terminate and all obligations of Warsaw pursuant to this Settlement Agreement shall cease. If, after review of the Final Report and Warsaw's comments the United States concludes that compliance has not been achieved, the United States will advise Warsaw of this finding together with a full description of each area of alleged non-compliance. If the United States advises Warsaw that full compliance has not been achieved monitoring activities shall continue and the Evaluator shall tour Warsaw and evaluate compliance on at least one occasion no later than eighteen (18) months following the Implementation Date of this agreement. Following this tour, the Evaluator shall advise the parties of his/her findings consistent with the time frame specified in this paragraph. Following the receipt of these findings, the parties shall confer. Warsaw may, following this conference by the parties, move to terminate the provisions of this Settlement Agreement. In any such proceeding, Warsaw shall bear the burden of establishing that it has fully and faithfully implemented each and every provision of this Settlement Agreement. The parties agree that the United States District Court for the Eastern District of Virginia is the appropriate forum for any such action.

AUDITS, COMPLIANCE, REPORTS, and ENFORCEMENT

34. Warsaw agrees to develop in writing within sixty (60) days of the date of this Settlement Agreement a plan for the regular evaluation of compliance with this Settlement Agreement by Warsaw by the management of Warsaw. The parties agree that the Administrator of Warsaw shall serve as internal compliance officer. Warsaw's Quality Assurance Committee may participate in monitoring activities pursuant to this paragraph and shall make whatever recommendations may be appropriate, based on facts disclosed in any monitoring activities.

35. If Warsaw fails to comply with any of the terms of this Settlement Agreement, or if any of Warsaw's representations or warranties be willfully false, the United States may, at its sole discretion, exercise one of the following rights:

a. Seek specific performance of this Settlement Agreement, in which case the prevailing party shall be entitled to an award of reasonable attorneys fees and costs; or

b. Exercise any other right granted by law, including civil contempt.

36. If the United States exercises any of its rights under this Settlement Agreement, Warsaw specifically reserves all of its rights to challenge, defend and contest any such action.

37. Warsaw and its agents, employees, contractors, and/or subcontractors agree that they will not intimidate or retaliate against any individual or individuals who assisted with this inquiry, or who may cooperate with any future effort to enforce the provisions of this Settlement Agreement or who express concerns to the Governments either voluntarily or in response to any future inquiries by state or federal officials. The parties agree that the provisions of this paragraph do not mean that any official of Warsaw has retaliated against or threatened any Warsaw employee for cooperating with the Governments' investigation of Warsaw.

38. The provisions imposed by this Settlement Agreement shall be in effect for a period of fifteen (15) months effective from the Implementation Date unless extended consistent with the requirements of paragraph 33. During that period, Warsaw shall submit quarterly reports regarding the status of its compliance with this agreement with the United States Attorney's Office of the Eastern District of Virginia; the first quarterly report shall be due on or before October 1, 2004, or on such other date as the parties may agree. Each said report shall include a description of the specific steps that Warsaw has taken to implement the agreement; barriers or impediments encountered that have precluded full and timely implementation; the

specific steps and/or procedures that have been adopted to overcome such barriers and ensure full implementation of the agreement; a description of the training programs implemented pursuant to the agreement and a summary of the activities undertaken in furtherance of these programs; and certification by an appropriate official of Warsaw that all covered persons have completed the required training and that the information provided is correct.

39. The United States understands and agrees that Warsaw in its sole discretion may determine to operate at fewer than its existing One Hundred Eighty (180) beds; or revise the configuration or number of its care units. If such actions are undertaken Warsaw may make adjustments in its staffing levels and capabilities as reasonable and consistent with the efficient and economic operation of the facility and such actions shall not constitute a violation of this Settlement Agreement.

RELEASES

40. In consideration of the promises made by Warsaw in this Settlement Agreement and conditioned upon payment in full of the settlement amounts referenced in paragraphs 1 and 2, the United States and the Commonwealth of Virginia, on behalf of the sovereigns, their respective officers, agents, agencies, and departments, hereby release and discharge Warsaw from any and all civil or administrative monetary claims, actions, causes of action, liabilities, losses, and damages, including attorneys' fees, costs and expenses, which the United States or the Commonwealth of Virginia may have against Warsaw, its owners, partners, parents, affiliates, officers, directors and employees under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, Virginia's civil Medicaid Fraud statutes §§ 32.1-312 and 313 of the Code

of Virginia, the Virginia Fraud Against Taxpayers Act, Va. Code §§ 8.01-216.1 – 8.01-2216.19 and common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for: (a) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Warsaw from January 1, 1998 to the Implementation Date of this Settlement Agreement and (b) the adequacy of care provided during the period January 1, 1998 to present to the nursing home residents identified in the HHS-OIG subpoena, dated August 2, 2002.

41. The parties agree that the releases given in the preceding paragraph specifically exclude the following:

a. Any civil or administrative disputes, adjustments, CMS or DMAS enforcement actions or claims relating to matters other than those for: (1) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Warsaw from January 1, 1998 to the Implementation Date of this Settlement Agreement and (2) the adequacy of care provided during the period January 1, 1998 to the present, to the nursing home residents who were the subject of the OIG subpoena dated August 2, 2002.

b. Any civil, criminal or administrative disputes or claims arising under the Internal Revenue Code, Title 26 of the United States Code.

c. Any disputes or claims arising under any express or implied warranties relating to products or services.

d. Any disputes or claims arising under the criminal laws of the United States or the Commonwealth of Virginia.

e. Except as explicitly stated otherwise in this settlement agreement, any administrative liability, including mandatory or permissive exclusion from federal health care programs.

f. Subject to the enforcement provisions of paragraph 35, any obligations created by this Settlement Agreement.

g. Any civil money penalty or termination action by CMS or DMAS, if any such action is based on matters other than deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Warsaw from January 1, 1998 to the Implementation Date of this Settlement Agreement and the adequacy of care provided during the period January 1, 1998 to present.

42. Warsaw agrees that all costs (as defined in the Federal Acquisition Regulation ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. § 1395-1395 g, and §§ 1396-1396v, (and the regulations promulgated there under) incurred by or on behalf of Warsaw in connection with: (a) the government's investigations, and Warsaw's investigation and defense of the matter covered by this Settlement Agreement, (b) the negotiation of this Settlement Agreement, and (c) the payments made to the United States, pursuant to paragraphs 1 and 2 of this Settlement Agreement, and (d) any corrective actions taken pursuant to this Agreement that are not related to providing resident care (including but not limited to the costs associated with hiring the Monitor and filing required reports and certifications) shall be unallowable costs for government contract accounting and for Medicare, Medicaid, VA and FEHBP reimbursement purposes. Unallowable costs shall not include: the cost of additional in service professional and compliance training for the staff, the costs related to additional personnel, including consultants hired or retained for the purpose of improving resident care,

capital improvements and other expenditures related to this agreement to the extent the costs do not result in Warsaw exceeding the Medicaid Prospective Operating Ceiling or Capital Reimbursement Limits established for the Medicaid nursing home payment system in Virginia. Unallowable costs shall be separately estimated and accounted for by Warsaw, and Warsaw will not charge such costs directly or indirectly to any contracts with the United States or any State Medicaid program, or to any cost report, cost statement, or information statement submitted by Warsaw to TRICARE, VA or FEHBP programs. Nothing in this Settlement Agreement shall constitute a waiver of the rights of Warsaw, or any Medicare fiscal intermediary or contractor, or any Medicaid fiscal agent, to examine or re-examine the unallowable costs described in this paragraph.

43. In consideration for such repose and on the terms and conditions contained herein, Warsaw fully and finally releases, dismisses, and forever discharges the United States, the Commonwealth of Virginia, and their agencies, employees, servants, and agents, from any and all claims, causes of action, liabilities, losses, and damages, including attorneys' fees, costs and expenses, which Warsaw has asserted or could have asserted against the United States or the Commonwealth of Virginia and their agencies, employees, servants, and agents before the effective date of this Settlement Agreement for: (a) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Warsaw from January 1, 1998 to the present and (b) the adequacy of care provided during the period January 1, 1998 to the present on behalf of the nursing home residents. This paragraph shall not be interpreted to prevent Warsaw from pursuing amounts due to Warsaw as a result of the Medicare or Medicaid cost reporting process.

OTHER PROVISIONS

44. The parties understand and agree that Warsaw has made a good faith and conscientious effort to operate its facility but that business exigencies may require the facility to reduce its bed capacity or cease operation all together. Nothing in this agreement shall be construed to preclude Warsaw from ceasing operation, downsizing, or from transferring beds to other affiliated facilities if permitted under applicable law. In the event Warsaw determines to reduce or limit its bed capacity or cease operation altogether it shall do so in accordance with legal requirements and make a good faith effort to minimize disruption for its residents. The transfer of a bed(s) to another facility in a different health planning district under Virginia law shall not constitute a change of ownership for purposes of 42 CFR § 489.18 and the obligations of this Settlement Agreement shall not be binding on the facility to which the beds are transferred.

45. This Settlement Agreement constitutes the complete agreement between the parties and may not be amended except by the written consent of the parties.

46. The undersigned individual signing this Settlement Agreement on behalf of Warsaw represents and warrants that he is authorized to execute this Settlement Agreement on behalf of Warsaw, its owners, partners, affiliates, parents, officers and directors. The undersigned United States and Commonwealth of Virginia signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement and to bind their respective sovereigns to the terms and conditions herein.

47. Each party to this Settlement Agreement will bear its own legal and other costs incurred in connection with this matter.

48. This Settlement Agreement is legally binding and judicially enforceable by the parties and it shall be binding upon all of the parties, their officers, agents, employees, assigns, and successors, including any transferees of Warsaw.

49. The effective date of this Settlement or the Implementation Date shall be the date of the signature of the Administrator of Warsaw.

COMMONWEALTH OF VIRGINIA

By: Tracey D. Slith
Tracey D. Slith
Assistant Attorney General
Office of the Attorney General
Medicaid Fraud Control Unit

Date: 11/1/04

By: Randall L. Clouse
Randall L. Clouse, Director
Office of the Attorney General
Medicaid Fraud Control Unit

Date: 11/30/04

By: Patrick W. Finnerty
Patrick W. Finnerty
Director
Department of Medical Assistant Services

Date: 10/25/04

By: Jerry W. Kilgore
Jerry W. Kilgore
Attorney General
Commonwealth of Virginia

Date: 12-2-04

By: Mark R. Warner
Mark Warner
Governor
Commonwealth of Virginia

Date: 12-10-04

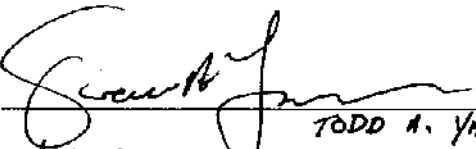
UNITED STATES OF AMERICA

By: Constance H. Frogale
Constance H. Frogale
Assistant U.S. Attorney
Eastern District of Virginia

Date: 12/13/04

WARSAW HEALTHCARE CENTER

By:


TODD A. YACOVONE

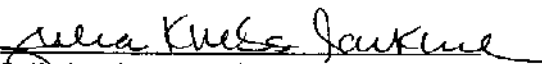
Title:

Administrator

Date:

12/28/04

By:



Julia Krebs-Markrich

REED SMITH LLP

Counsel for Warsaw, a partnership

Date:

January 3, 2005

WARSAW HEALTHCARE CENTER

By: _____

Title: _____

Date: _____

By: _____

Julia Krebs-Markrich

REED SMITH LLP

Counsel for Warsaw, a partnership

3110 Fairview Park Drive, Ste 1400
Falls Church, VA 22042

Date: _____